

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3397 OF 2006

Bhagyalaxmi Construction and Engineering Company, Kolhapur	.. Petitioner.
Vs.	
Maharashtra Krushna Khore Vikas Mahamandal	.. Respondent.

Mr.Amit Borkar for the petitioner.

CORAM : D.B.BHOSALE, J.

DATED : 29TH AUGUST, 2006

P.C.:

. Heard learned counsel for the petitioner.

2. This petition is directed against the order dated 7.3.2006 passed by the trial Court rejecting the application filed by the petitioner-defendant for trying the issue of limitation as a preliminary issue. Mr.Borkar, learned counsel for the petitioner submits that bare reading of the plaint would show that the suit is barred by limitation. He took me through paragraphs 10 and 12 of the plaint. He placed reliance on the judgment of this Court in **Sudesh w/o Sushilkumar Handa Vs. Abdul Ajiz s/o Umarbhai and Anr. 2001(1) Mh.L.J. 324**. I perused the plaint as also the impugned order. For the reasons stated in the last paragraph of the order I see no reason to

interfere with the order in the writ jurisdiction under Article 227 of the Constitution of India. It is clear that the evidence in the suit has already begun. The learned Judge, in the facts and circumstances of the case, has held that the issue of limitation is an issue of mix question of law and facts. Keeping that in view and considering the stage of suit I am not inclined to interfere with the order impugned in the present writ petition. The judgment relied upon by the petitioner would also not help in view of the peculiar facts and circumstances of this case. The petitioner can raise all the contentions in the writ petition during the trial and at the stage of final arguments on the issue of limitation. In the circumstances this petition is dismissed with liberty to the petitioner to raise all the contentions at appropriate stage.

(D.B.Bhosale, J.)